

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

July 1, 2003

ITEM: 21

SUBJECT: Administrative Civil Liability Complaint No. R8-2003-0044 – Ralph Te Velde,
Operator of Tee Vee Farm

SUMMARY

Ralph Te Velde, operator of Tee Vee Farm, is alleged to have violated Discharge Specifications 1 and 3 of the General Waste Discharge Requirements for Concentrated Animal Feeding Operations (Dairies and Related Facilities), Order No. 99-11, NPDES No. CAG018001. Discharge Specification 1 requires construction and maintenance of containment structures to prevent the discharge of process wastewater (including runoff mixed with manure), and Discharge Specification 3 prohibits discharges to the navigable waters of the United States, except as authorized by waste discharge requirements. On June 9, 2003, the Executive Officer issued Administrative Civil Liability Complaint (ACLC) No. R8-2003-0044 to Ralph Te Velde. The maximum liability that the Regional Board could assess administratively under California Water Code (CWC) Section 13385(c) for the discharge observed on December 17, 2002 is \$10,000 for one day of discharge plus \$10 per gallon for each gallon discharged in excess of the first 1,000 gallons. It was likely the volume of discharge exceeded 1,000 gallons; however, Regional Board staff was unable to reasonably estimate the discharge volume. Therefore, the maximum liability that could be calculated for this violation is \$10,000 for the one day of violation. The assessment proposed in ACLC No. R8-2003-0044 is \$10,000. The matter before the Board is whether to affirm, reject, or modify this assessment.

BACKGROUND

The Regional Board began issuing individual waste discharge requirements to all dairy facilities in the Region in 1972. On August 20, 1999, the Regional Board adopted General Waste Discharge Requirements for Concentrated Animal Feeding Operations (Dairies and Related Facilities) within the Santa Ana Region, NPDES No. CAG018001 (Order No. 99-11). Dairies previously enrolled under the prior general waste discharge requirements (Order No. 94-7) or individual waste discharge requirements (WDRs) were automatically enrolled in Order No. 99-11.

Storm water runoff from manured areas on dairies includes runoff from corrals, stockpile areas, and disposal fields. Order No. 99-11 requires that all storm water runoff from manured areas be contained on property owned or controlled by the dairy. Storm water runoff and dairy wash water are to be discharged to containment areas or applied to fields for disposal by evaporation and percolation. Dairies are not permitted to discharge process wastewater (which includes runoff from manured areas) to waters of the United States, except under certain conditions when a 25-year, 24-hour storm occurs. Regional Board staff takes certain circumstances into consideration before recommending enforcement actions for dairy wastewater discharges that do occur. Enforcement actions are generally recommended when discharges occur due to

negligence, failure to implement reasonable actions to prevent the discharges, or as a result of deliberate actions.

FINDINGS

Ralph Te Velde has been operating Tee Vee Farm at 14744 Archibald Avenue, Chino, since 1980. On February 11, 1980, Ralph Te Velde submitted a report of waste discharge for the facility, and was subsequently issued waste discharge requirements (WDRs) under Order No. 80-210 on December 12, 1980. On September 9, 1999, Ralph Te Velde was authorized to discharge wastes in accordance with Order No. 99-11.

On December 17, 2002, Regional Board staff observed a discharge of runoff from a corral on Tee Vee Farm as a result of staff's routine wet-weather surveillance activities. The corral was being actively used to house cows. The discharge exited the facility along its southerly boundary and entered a roadside ditch on Merrill Avenue. From there, it was conveyed to a storm drain inlet that drained directly into Cucamonga Creek. Cucamonga Creek is a primary tributary to Reach 3 of the Santa Ana River (a navigable water of the United States).

The discharge was the result of runoff accumulating in a southerly corral to a depth that allowed it to exit the corral and flow onto an access driveway serving the facility. The corral runoff commingled with a stream of runoff draining from the northerly commodity area. At the time of staff's observation, the discharge rate to Merrill Avenue was estimated to be in the range of 20 to 50 gallons per minute.

Regional Board staff met with both Ralph and Ken (his son) Te Velde to notify them of the discharge incident. They stated they were unaware of the discharge at that time. Placing a temporary crushed rock ramp across the access driveway and grading a shallow swale to channel the corral runoff in a westerly direction to their western disposal field stopped the discharge.

Regional Board staff was unable to determine when the discharge began. Based upon precipitation data from several recording stations in the Chino Basin, it appears that at no time did the Chino area receive sufficient rainfall to match or exceed a 25-year, 24-hour storm event (about 4.5 inches). Rainfall recorded on December 17, 2002 was approximately 1.4 inches in a 24-hour period. Measurable rain prior to December 17 occurred during November 30 - December 1, 2002 when approximately 0.2 inch of rain fell.

Prior to the adoption of Order No. 99-11, some dairy facilities were requested by Regional Board staff to develop and implement engineered waste management plans (EWMPs) due to their prior history of discharges in violation of WDRs. On September 5, 1991, Regional Board staff requested that Ralph Te Velde develop an EWMP for his facility. An EWMP was submitted, reviewed by staff, and on November 7, 1996, Ralph Te Velde submitted a letter to the Regional Board certifying that the EWMP had been fully implemented. The EWMP's containment plan included the construction of an earthen berm along the facility's southerly boundary to prevent the discharge of corral runoff from the southerly corrals to Merrill Avenue.

Discharges of manured wastewater and runoff have been observed several times since 1991 when Mr. Te Velde was requested to prepare an EWMP. For instance, on March 5 and March 9, 2001, Regional Board staff observed discharges of manured runoff from the southerly corrals into the Merrill Avenue drainage ditch. Regional Board records indicate that, since September 1993, eight non-compliant discharge incidents involving either an actual observed discharge or

strong post-incident evidence of a discharge have been documented. Such discharge incidents should not have occurred with an effectively implemented EWMP.

On June 9, 2003, the Executive Officer issued ACLC No. R8-2003-0044 to Ralph Te Velde for the discharge that occurred on December 17, 2002. The ACLC proposed that administrative civil liability be imposed on Ralph Te Velde in the amount of \$10,000.

DISCUSSION

CWC Section 13385(e) specifies factors that the Board shall consider in establishing the amount of civil liability. These factors are discussed below:

1. Nature, Circumstances, Extent and Gravity of the Violation

The discharge noted above was in violation of Discharge Specifications 1 and 3 of Order No. 99-11. Section 13385(a) of the CWC stipulates that a violation of waste discharge requirements shall be liable civilly. The discharge of pollutants noted above was not authorized by waste discharge requirements. Therefore, Ralph Te Velde is liable civilly in accordance with CWC Section 13385(a). Section 13385(c) of the CWC provides that the Regional Board may impose administrative civil liability in an amount that shall not exceed ten thousand dollars (\$10,000) for each day in which the violation occurs, plus \$10 per gallon for each gallon in excess of 1,000 gallons that are discharged. In this case, Regional Board staff was unable to determine the duration of discharge in order to estimate the total discharge volume. Therefore, the maximum amount of liability that was subject to calculation that the Regional Board could assess administratively for the discharge observed on December 17, 2002 by Ralph Te Velde is \$10,000.

The discharge occurred due to a failure to construct and maintain effective containment structures to prevent the discharge of manured runoff from the southerly corral. The failure to contain this storm water runoff mixed with manure allowed pollutants contained in this runoff to be discharged to Cucamonga Creek, a primary tributary to Reach 3 of the Santa Ana River (a navigable water of the United States).

The beneficial uses of Reach 3 of the Santa Ana River include, in part, water contact recreation, non-contact water recreation, groundwater recharge and warm freshwater habitat. Municipal wastewater that is discharged to Reach 3 of the Santa Ana River requires a high level of treatment to render the wastewater essentially free of organic matter and pathogens. Storm water runoff from corrals contains pollutants, including, in part, pathogens, nutrients (nitrogen and phosphorus), chemical oxygen demand, high turbidity, ammonia, and dissolved solids (salts). The pollutants in dairy process wastewater can significantly impact the beneficial uses of the Santa Ana River and groundwater in Orange County.

2. Ability to Pay the Proposed Assessment

Board staff has no information to indicate that Ralph Te Velde would be unable to pay the proposed assessment.

3. Any Prior History of Violations

It appears that Ralph Te Velde has chronically failed to effectively implement runoff containment structures to prevent discharges of manured runoff from the southern portion of his facility.

Regional Board records indicate eight separate observed discharge incidents, or strong evidence that a discharge had recently occurred, since September 1993.

4. Degree of Culpability

Ralph Te Velde is entirely culpable for the discharge observed on December 17, 2002. There is no evidence that off-site run-on was a factor in this discharge. The discharge that occurred was not the result of rainfall exceeding a 25-year, 24-hour storm. Instead, the discharge was the result of failure to construct and maintain containment structures, and, therefore, could have been avoided. The discharge occurred despite Regional Board staff's efforts to encourage improvement of containment along the southerly boundary by notifying Ralph Te Velde or his representatives during past discharge incidents, either in writing or by telephone conversations or on-site meetings.

5. Economic Benefit or Savings, if any, Resulting from the Discharge

Water Code Section 13385(e) specifies factors that the Regional Board shall consider in establishing the amount of civil liability. At a minimum, liability shall be assessed at a level that recovers the economic benefits derived from the act(s) that constitute the violation. An economic analysis was performed to determine what benefit there was for failing to provide adequate containment. Staff's analysis indicates that the economic benefit derived from failure to take appropriate actions to prevent the discharge (i.e constructing an adequate berm) is less than \$1,300. Based on consideration of those factors and the economic benefit, it is proposed that an administrative civil liability be imposed on Ralph Te Velde in the amount of \$10,000.

RECOMMENDATION

Regional Board staff recommends that the Regional Board affirm the assessment proposed in Complaint No. R8-2003-0044. Further, staff recommends that the Board direct the Executive Officer to take appropriate steps to collect the assessment in the event that Ralph Te Velde, dba Tee Vee Farm, fails to pay this assessment in a timely manner.

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION**

IN THE MATTER OF:

**Ralph Te Velde
Tee Vee Farm
14744 Archibald Avenue
Chino, CA 91710**

**COMPLAINT NO. R8-2003-0044
FOR
ADMINISTRATIVE CIVIL LIABILITY**

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Ralph Te Velde, operator of Tee Vee Farm, is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region, (hereinafter Regional Board) may impose civil liability pursuant to Section 13385 of the California Water Code (Water Code).
2. A hearing concerning this complaint will be held before the Regional Board within 90 days of the date of issuance of this complaint, unless Ralph Te Velde waives his right to a hearing. Waiver procedures are specified on page 2 of the complaint. If the hearing in this matter is not waived, it will be held during the Regional Board's next regular meeting on July 1, 2003 at the City of Loma Linda Council Chambers, 25541 Barton Road, Loma Linda, CA. The meeting begins at 9:00 a.m. Ralph Te Velde, or his representative, will have an opportunity to appear and be heard and to contest the allegations in this complaint and the imposition of civil liability by the Regional Board. An agenda for the meeting will be mailed to you not less than 10 days before the hearing date.
3. If the July 1, 2003, hearing is held, the Regional Board will consider whether to affirm, reject, or modify the proposed administrative civil liability or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. Ralph Te Velde is alleged to have violated Discharge Specification A.3. of the General Waste Discharge Requirements for Concentrated Animal Feeding Operations (Dairies and Related Facilities) in the Santa Ana Region, NPDES No. CAG018001 (Order No. 99-11).
5. The complaint is based on the following facts:
 - A. Ralph Te Velde has been operating a dairy at 14744 Archibald Avenue under waste discharge requirements (WDRs) adopted by the Regional Board since 1980. On September 9, 1999, the Regional Board adopted Order No. 99-11. On September 9, 1999, Ralph Te Velde was authorized to discharge wastes in accordance with Order No. 99-11.
 - B. On December 17, 2002, Regional Board staff observed manured runoff (runoff commingled with manure) being discharged from a corral in the southern portion of the facility. The manured runoff was being discharged into a roadway drainage ditch, adjacent to Merrill Avenue, that discharges into the Cucamonga Channel, a major tributary of the Santa Ana River (a water of the United States).

6. Pursuant to Water Code Section 13385(a)(2), those who violate any waste discharge requirement are liable civilly. As provided by Water Code Section 13385(c), the Regional Board can administratively assess a civil liability in an amount not to exceed \$10,000 for each day in which the violation occurs, and \$10 for each gallon discharged that exceeds 1,000 gallons.
7. The maximum liability that the Regional Board could assess administratively for the December 17, 2002 discharge, in accordance with Water Code Section 13385(c), is \$10,000 for the one day of discharge and \$10 for each gallon in excess of 1,000 gallons that was discharged. However, the volume of the discharge is unknown since it is unknown when the discharge began and the rate of discharge during the time that the discharge was occurring. Since the volume of the discharge is unknown, it is not possible to determine the liability for the volume discharged in excess of 1,000 gallons.
8. Water Code Section 13385(e) specifies factors that the Regional Board shall consider in establishing the amount of civil liability. At a minimum, liability shall be assessed at a level that recovers the economic benefits derived from the act(s) that constitute the violation. An economic analysis was performed to determine what benefit there was for failing to provide adequate containment. Staff's analysis indicates that the economic benefit derived from failure to take appropriate actions to prevent the discharge is less than \$1,300. Based on consideration of those factors and economic benefit, it is proposed that an administrative civil liability be imposed on Ralph Te Velde in the amount of \$10,000.


WAIVER OF HEARING

You may waive your right to a hearing. If you waive your right to a hearing, please sign the attached waiver and return it with a check made payable to the State Water Resources Control Board in the amount of the civil liability proposed in paragraph 8 above. Send the check and waiver to:

Santa Ana Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, CA 92501-3339

If you have any questions regarding this complaint, please contact Gerard J. Thibeault at (909) 782-3284, Stephen D. Mayville at (909) 782-4922, or contact the Regional Board's staff counsel, Jorge Leon at (916) 341-5180.

6/9/03
Date


Gerard J. Thibeault
Executive Officer

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION**

IN THE MATTER OF:

Ralph Te Velde
Tee Vee Farm
14744 Archibald Avenue
Chino, CA 91710

**COMPLAINT NO. R8-2003-0044
FOR
ADMINISTRATIVE CIVIL LIABILITY**

WAIVER OF HEARING

Ralph Te Velde, operator of Tee Vee Farm, agrees to waive his right to a hearing before the Santa Ana Regional Water Quality Control Board with regard to violations alleged in Complaint No. R8-2003-0044. Ralph Te Velde has enclosed a check or money order made payable to the State Water Resources Control Board in the amount of \$10,000 in settlement of Complaint No. R8-2003-0044. Ralph Te Velde understands that he is giving up his right to be heard and to argue against allegations made by the Executive Officer in this complaint, and against the imposition of, and amount of, the civil liability.

Date _____

Ralph Te Velde



California Regional Water Quality Control Board

Santa Ana Region

Winston H. Hickox
Secretary for
Environmental
Protection

Internet Address: <http://www.swrcb.ca.gov/rwqcb8>
3737 Main Street, Suite 500, Riverside, California 92501-3348
Phone (909) 782-4130 - FAX (909) 781-6288



*The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption.
For a list of simple ways you can reduce demand and cut your energy costs, see our website at www.swrcb.ca.gov/rwqcb8.*

June 9, 2003

Ralph Te Velde
Tee Vee Farm
14744 Archibald Avenue
Chino, CA 91710

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R8-2003-0044

Dear Mr. Te Velde:

Enclosed is Complaint No. R8-2003-0044 assessing administrative civil liability for violations of your General Waste Discharge Requirements for Concentrated Animal Feeding Operations (Dairies and Related Facilities), Order No. 99-11 (NPDES No. CAG018001), for your dairy located at 14744 Archibald Avenue, Chino. A public hearing on this matter has been scheduled for July 1, 2003, at 9:00 a.m., at the City of Loma Linda Council Chambers, 25541 Barton Road, Loma Linda, California. An agenda and a staff report will be provided to you not less than 10 days prior to the meeting.

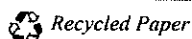
If you choose to waive your right to a hearing, please complete the enclosed waiver form and submit it to this office prior to the hearing along with a check for the proposed amount of civil liability (\$10,000). The check should be made payable to the State Water Resources Control Board.

If you do not wish to waive your right to a hearing, you should contact this office to schedule a pre-hearing meeting. At that time, you may submit information that may not have been previously available to Regional Board staff regarding this matter. The information should address the following items:

1. Nature, circumstances, extent and gravity of the violation;
2. Your ability to pay the proposed assessment;
3. Any prior history of violation;
4. Your degree of culpability;
5. Economic benefit, or savings, resulting from the violation; and
6. Other matters that justice may require.

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California Environmental Protection Agency



June 9, 2003

If you have any questions, or wish to schedule a pre-hearing meeting, please call Stephen D. Mayville, Chief of the Dairy Section, at (909) 782-4992, or Michael Perez at (909) 782-4306.

Sincerely,



Gerard J. Thibeault
Executive Officer

Enclosures: Administrative Civil Liability Complaint No. R8-2003-0044
Waiver of Hearing

cc: (w/enclosures)
Regional Board
State Water Resources Control Board, Office of the Chief Counsel – Jorge Leon
State Water Resources Control Board, Division of Water Quality – John Menke
U.S. Environmental Protection Agency, Region IX, Permits Issuance Section –
Eugene Bromley (W-5-1)
U.S. Environmental Protection Agency, Region IX, Clean Water Act Compliance
Office – Kathy Moore
Milk Producers Council - Bob Feenstra
Western United Dairyman - John Borges
Lawyers for Clean Water
Orange County Coast Keeper
NRDC



California Regional Water Quality Control Board

Santa Ana Region

Winston H. Hickox
Secretary for
Environmental
Protection

Internet Address: <http://www.swrcb.ca.gov/rwqcb8>
3737 Main Street, Suite 500, Riverside, California 92501-3348
Phone (909) 782-4130 - FAX (909) 781-6288



June 25, 2003

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Ralph Te Velde
Tee Vee Farm
14744 Archibald Avenue
Chino, CA 91710

TENTATIVE ORDER NO. R8-2003-0084, TEE VEE FARM, 14744 ARCHIBALD AVE., CHINO

Dear Mr. Te Velde:

We are enclosing a copy of the tentative Order No. R8-2003-0084, which will be considered by the Board at the July 1, 2003 Board meeting. The Staff Report and the agenda announcement for the Board meeting have been sent to you separately.

If you have any questions regarding this matter, you may contact Stephen D. Mayville at (909) 782-4992. All legal questions should be referred to our legal counsel Mr. Jorge Leon, at (916) 341-5180.

Sincerely,

Gerard J. Thibeault
Executive Officer

Enclosures: Tentative Order No. R8-2003-0084, Staff Report and Agenda Announcement

Cc with enclosures:

Regional Board

State Water Resources Control Board, Office of the Chief Counsel – Jorge Leon
State Water Resources Control Board, Division of Water Quality – John Menke
U.S. Environmental Protection Agency, Region IX, Permits Issuance Section – Eugene Bromley (W-5-1)
U.S. Environmental Protection Agency, Region IX, Clean Water Act Compliance Office – Kathy Moore
Milk Producers Council - Bob Feenstra
Western United Dairymen - John Borges
Lawyers for Clean Water
Orange County Coast Keeper
David Beckman, NRDC

California Environmental Protection Agency

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION**

IN THE MATTER OF:

**Ralph Te Velde
Tee Vee Farm
14744 Archibald Avenue
Chino, CA 91710**

)
) **TENTATIVE ORDER NO. R8-2003-0084**
) **FOR**
) **ADMINISTRATIVE CIVIL LIABILITY**
)

The California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), is to receive testimony and take evidence on the allegations contained in Complaint No. R8-2003-0044, issued by the Executive Officer at the Santa Ana Board on June 9, 2003, and on the recommendation for the imposition of an assessment of civil liability pursuant to Water Code Section 13385 (c) in the amount of \$10,000. The Board finds as follows:

1. Ralph Te Velde has been operating Tee Vee Farm at 14744 Archibald Avenue, Chino, since 1980. On February 11, 1980, Ralph Te Velde submitted a report of waste discharge for the facility, and was subsequently issued waste discharge requirements (WDRs) under Order No. 80-210 on December 12, 1980. On September 9, 1999, Ralph Te Velde was authorized to discharge wastes in accordance with General Waste Discharge Requirements for Concentrated Animal Feeding Operations (Dairies and Related Facilities) in the Santa Ana Region, NPDES No. GCA018001, Order No. 99-11.
2. On December 17, 2002, Regional Board staff observed a discharge of runoff from a corral on Tee Vee Farm as a result of staff's routine wet-weather surveillance activities. The corral was being actively used to house cows. The discharge exited the facility along its southerly boundary and entered a roadside ditch on Merrill Avenue. From there, it was conveyed to a storm drain inlet that drained directly into Cucamonga Creek. Cucamonga Creek is a primary tributary to Reach 3 of the Santa Ana River (a navigable water of the United States).
3. The discharge was the result of runoff accumulating in a southerly corral to a depth that allowed it to exit the corral and flow onto an access driveway serving the facility. The corral runoff co-mingled with a stream of runoff draining from the northerly commodity area and then flowed onto Merrill Avenue. At the time of staff's observation, the discharge rate to Merrill Avenue was estimated to be in the range of 20 to 50 gallons per minute.
4. Regional Board staff met with both Ralph and Ken (his son) Te Velde to notify them of the discharge incident. They stated they were unaware of the discharge at that time. Placing a temporary crushed rock ramp across the access driveway and grading a shallow swale to channel the corral runoff in a westerly direction to their western disposal field stopped the discharge.

5. Regional Board staff was unable to determine when the discharge began. Based upon precipitation data from several recording stations in the Chino Basin, it appears that at no time did the Chino area receive sufficient rainfall to match or exceed a 25-year, 24-hour storm event (about 4.5 inches). Rainfall recorded on December 17, 2002 was approximately 1.4 inches in a 24-hour period. Measurable rain prior to December 17 occurred during November 30 - December 1, 2002 when approximately 0.2 inch of rain fell.
6. Prior to the adoption of Order No. 99-11, some dairy facilities were requested by Regional Board staff to develop and implement engineered waste management plans (EWMPs) due to their prior history of discharges in violation of WDRs. On September 5, 1991, Regional Board staff requested that Ralph Te Velde develop an EWMP for his facility. An EWMP was submitted, reviewed by staff, and on November 7, 1996, Ralph Te Velde submitted a letter to the Regional Board certifying that the EWMP had been fully implemented. The EWMP's containment plan included the construction of an earthen berm along the facility's southerly boundary to prevent the discharge of corral runoff from the southerly corrals to Merrill Avenue.
7. Discharges of manured wastewater and runoff have been observed several times since 1991 when Mr. Te Velde was requested to prepare an EWMP. For instance, on March 5 and March 9, 2001, Regional Board staff observed discharges of manured runoff from the southerly corrals into the Merrill Avenue drainage ditch. Regional Board records indicate that, since September 1993, eight non-compliant discharge incidents involving either an actual observed discharge or strong post-incident evidence of a discharge have been documented. Such discharge incidents should not have occurred with an effectively implemented EWMP.
8. By failing to contain the manured runoff from Tee Vee Farm, Ralph Te Velde violated Discharge Specification A.1. and A.3. of the General Waste Discharge Requirements for Concentrated Animal Feeding Operations (Dairies and Related Facilities) in the Santa Ana Region, NPDES No. CAG018001 (Order No. 99-11).
9. Pursuant to Water Code Section 13385(a)(2), those who violate any waste discharge requirement are liable civilly. As provided by Water Code Section 13385(c), the Regional Board can administratively assess a civil liability in an amount not to exceed \$10,000 for each day in which the violation occurs, and \$10 for each gallon discharged that exceeds 1,000 gallons.
10. The maximum liability that the Regional Board could assess administratively for the December 17, 2002 discharge, in accordance with Water Code Section 13385(c), is \$10,000 for the one day of discharge. No liability assessment for the discharge volume has been proposed since the volume of the discharge is unknown. It is unknown when the discharge began and the rate of discharge during the time that the discharge was occurring.
11. An economic analysis was performed to determine what benefit there was for failing to provide adequate containment. Staff's analysis indicates that the economic benefit derived from failure to take appropriate actions to prevent the discharge is less than \$1,300.

July 1, 2003

12. Section 13385 (e) specifies factors that the Board shall consider in establishing the amount of civil liability. These factors include: nature, circumstances, extent, and gravity of the violation, and with respect to the discharger, the ability to pay, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation. The factors are analyzed in the Staff Report that accompanied ACL Complaint No. R8-2003-0044, which is incorporated herein by reference.
13. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 2100 et seq.) in accordance with Section 15321, Chapter 3, Title 14, California Code of Regulations.

IT IS HEREBY ORDERED that pursuant to California Water Code Section 13385, civil liability is imposed on Ralph Te Velde the amount of \$10,000 for the violations cited.

Pursuant to Water Code Section 13320, you may petition the State Water resources Control Board for review of this Order. If you choose to do so, you must submit the petition to the State Board within 30 days of the Regional Board's adoption of his Order.

I, Gerard J. Thibeault, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an order adopted by the California Regional Water Quality Control Board, Santa Ana Region, on July 1, 2003.

Gerard J. Thibeault
Executive Officer